IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.308 OF 2007
WITH
CIVIL APPLICATION NO.617 OF 2007

Sudha Subhash Mulik .. Appellant.
Vs.
Keshav Gopal Jare .. Respondent.

Mr.Amit Sale for the appellant.

CORAM : D.B.BHOSALE, J.
DATED : 4TH SEPTEMBER, 2007.

P.C.:

. Heard learned counsel for the appellant.

2. This second appeal by original defendant is directed against the judgments of the courts below by which a suit of the respondent-plaintiff for recovery of money against the construction of house stands decreed. Mr.Sale, learned counsel for the appellant submitted that the judgments of the courts below are based on the evidence of one Pendse, the holder of Power of Attorney, on behalf of the plaintiff and that he had no personal knowledge of the actual construction carried out by the plaintiff and therefore, his evidence could not have been relied upon for decreeing the suit. In support of this contention he placed reliance upon the judgment of

the Supreme Court in **Janki Vashdeo Bhojwani and Anr. V. Indusind Bank Ltd. and Others 2005(2) SCC 217**.

3. I perused the judgment relied upon by Mr.Sale so also the findings recorded by the courts below. The Supreme Court in the cited judgment has held that if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts not done by him. In the present case the agreement was signed on behalf of the plaintiff by Pendse. It is true that he admitted in the cross examination that he had no knowledge about all the transactions of the plaintiff. No specific question was, however, put to him about the suit transaction in the cross examination. Merely because the holder of the power of attorney could not state about other transactions of the plaintiff, it would not be correct to reach a conclusion that he had no knowledge regarding the suit transaction. The courts below have considered this aspect and on the basis of the entire evidence on record have rightly held that Pendse had personal knowledge of the suit transaction. It is also pertinent to note that the defendant has taken a bold defence that the construction was not carried out by him at all and it was carried out by one Mr.Patil.

Neither the defendant stepped into witness box nor did he examine Mr.Patil in support of his case. Except mere denial there is no material on record to show that the plaintiff did not carry out the construction. There is sufficient material on record to show that the suit construction was done by the plaintiff. I find absolutely no merit in the second appeal. Considering the concurrent findings recorded by the courts below and as I find sufficient material on record to sustain those findings the second appeal deserves to be dismissed and is dismissed as such. Consequently, the civil application is also disposed of.

(D.B.BHOSALE, J.)